

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

E.I. DU PONT DE NEMOURS AND
COMPANY, a Delaware corporation,

Plaintiff,

v.

CANYON GROUP LLC, a Delaware
limited liability company, and NISSAN
CHEMICAL INDUSTRIES, LTD., a
Japanese corporation,

Defendants.

C.A. NO. _____

PUBLIC VERSION

**[PROPOSED] ORDER GRANTING MOTION OF PLAINTIFF
FOR PRELIMINARY INJUNCTION IN AID OF ARBITRATION**

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Dated: April 7, 2005/676979

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

E.I. DU PONT DE NEMOURS AND)	
COMPANY, a Delaware corporation,)	
)	C.A. NO. _____
Plaintiff,)	
)	
v.)	
)	
CANYON GROUP LLC, a Delaware)	CONFIDENTIAL –
limited liability company, and NISSAN)	FILED UNDER SEAL
CHEMICAL INDUSTRIES, LTD., a)	PURSUANT TO L.R. 26.2
Japanese corporation,)	
)	
Defendants.)	

**[PROPOSED] ORDER GRANTING MOTION OF PLAINTIFF
FOR PRELIMINARY INJUNCTION IN AID OF ARBITRATION**

This matter having come before the Court for consideration pursuant to motion of Plaintiff E.I. du Pont de Nemours and Company ("DuPont") for preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure, and the Court having considered the Complaint, declaration of Thomas J. Harkin, exhibits, argument of the counsel and other materials on file makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. In 1982, DuPont and Nissan entered into a

REDACTED

When

used in formulation with other ingredients,

applied after the has emerged from the soil, kills , and protects numerous crops, such as

2. Among its key features,

REDACTED

3. are regulated products in the United States. The United States Environmental Protection Agency (“EPA”) oversees the regulation of pesticides under the Federal Insecticide, Rodenticide and Fungicide Act (“FIFRA”). No may be sold lawfully in the United States unless and until the EPA has approved its registration application. Moreover, state regulatory agencies must approve a registration application before can be sold in that state. Many countries regulate pesticides and have programs similar to the FIFRA registration process.

4. Typically, the FIFRA registration process requires several years and considerable expense before a registration application is approved. A registrant must submit numerous health and environmental toxicity studies, and also conduct efficacy studies. Additionally, EPA must approve the Confidential Formulation Statement, which in effect is the recipe for combining the active ingredient, **REDACTED** other ingredients to facilitate the efficacy of the product. Each Confidential Formulation Statement contains proprietary and trade secret information.

The Confidential Formulation Statement is not released to the public. Moreover, EPA and state regulatory agencies must approve the label for each commercial herbicide product.

5. DuPont required a significant benefit to compensate it for the significant risks and investment in financial and human resources in obtaining regulatory approval

REDACTED

6. Article 13 of sets forth the term of the agreement. Article 13 provides:

7.

REDACTED

8. Nissan insists that Article 13 should be interpreted to mean that

REDACTED

9.

10.

REDACTED

11. Nissan does not assert that DuPont has failed to fulfill its obligations under

REDACTED

12. DuPont filed registration applications and studies with the EPA and filed registration applications throughout the Territory and prosecuted those applications. DuPont obtained an EPA registration for

As a result of

DuPont's efforts, **REDACTED** in the United States, more than 40 states, and for use on over 20 crops.

13.

REDACTED

in the United States and the Territory, DuPont has expended considerable financial and human resources.

14. Sales from generate annual revenues of approximately

15. In June 2004, Nissan announced that it formed Canyon Group, in partnership with Nissan's press announcement indicated that

REDACTED

In addition, sales supporting transitional Nissan agreements with various companies will be channeled through Canyon. The new company will grow its business through product acquisitions and label expansions."

16. The agreement between Nissan and DuPont was among the contracts channeled to Canyon Group.

17. In November 2004, Nissan notified DuPont as follows:

18. **REDACTED** authorized to conduct business in DuPont's Nissan and Canyon Group have enlisted support from a third party,

REDACTED

19. Nissan sought DuPont's consent to allow Nissan to furnish DuPont's confidential information to Canyon Group to facilitate Canyon Group's formulation

REDACTED DuPont refused to release its confidential information.

20. In late December 2004, issued a press release announcing it would offer
sometime in the spring 2005.

REDACTED

21. In the past several weeks, Nissan and Canyon Group
in the United States.

22. Nissan and Canyon Group have begun soliciting distributors, encouraging them

REDACTED

23. has begun advertising in the United States.

24. DuPont, Nissan and Canyon Group have tried to resolve their differences regarding the status of DuPont's rights under The parties have been unsuccessful.

25. Due to the extensive work required to obtain regulatory approval of new pesticide products, DuPont believes that the only way Defendants would be in a position to have ready for distribution this spring is if Nissan, without DuPont's consent, furnished DuPont's confidential information to Canyon Group to use in formulating

REDACTED

26. DuPont and Nissan have agreed to arbitrate "any dispute arising out of or in connection with" in Japan in a proceeding to be overseen by the International Chamber of Commerce ("ICC").

27. DuPont is prepared to arbitrate the current dispute.

28. Agricultural application in the United States during and then not again until 2006. To meet that application

schedule, any company marketing the product must

REDACTED

29. The ICC can only provide interim injunctive relief through an appointed arbitral panel. Such appointments and ICC confirmations have the practical effect that the ICC will be unable to appoint a panel and have the matter briefed and considered before the dates by which quizalofop must be sold.

30. DuPont requests that this Court issue a preliminary injunction in aid of the parties' arbitration agreement. DuPont requests an injunction to preserve the status quo—DuPont's rights—until a duly constituted arbitral panel rules on the issues presented.

31. Unless enjoined, Nissan and Canyon Group

REDACTED

Such actions

will cause DuPont to lose goodwill, lose customers and suffer pricing erosion.

CONCLUSIONS OF LAW

1. The Court has jurisdiction of the parties and of the subject matter.
2. Plaintiff has shown a reasonable probability of likelihood of success on the merits of its claims for breach of tortious interference with the and misappropriation of confidential information. Specifically, Plaintiff has shown a reasonable probability of successfully proving at arbitration that DuPont's rights under remain in full force and effect

REDACTED

3. The balance of hardships tips decidedly in favor of Plaintiff, which is sustaining ongoing and irreparable harm due to Defendants' efforts

REDACTED

4. The entry of a preliminary injunction to preserve the status quo until a duly constituted arbitration panel rules on the claims alleged is not adverse to the public interest. The public interest will be served by an injunction tailored to avoid confusion in the marketplace between the products of Plaintiffs and those of Defendants. The public interest also will be served by preventing Defendants from interfering with DuPont's legally protected contractual rights and by deterring similar interference in the future.

IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. Nissan, Canyon Group, and their affiliates and contractual partners, are HEREBY ENJOINED AND RESTRAINED from

REDACTED

until the ICC Tribunal has issued a decision relative to whether provisions in entered into between DuPont and Nissan remain in full force and effect.

2. Plaintiffs must post a preliminary injunction bond in the amount of \$_____ within _____ days of the date the Court enters this Preliminary Injunction. A corporate bond shall satisfy the requirements of this paragraph.

3. This injunction is effective commencing at 5:00 p.m. on the _____ day of _____, 2005, and will remain in effect until further Order of this Court.

IT IS SO ORDERED AND DECREED, this the ____ day of _____ 2005.

U.S. District Court Judge

676943

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CERTIFICATE OF SERVICE


I, Richard L. Horwitz, hereby certify that on April 14, 2005, the attached document was served via hand delivery and electronically filed with the Clerk of the Court using CM/ECF which will send notification of such filing(s) to the following and the document is available for viewing and downloading from CM/ECF:

Frederick L. Cottrell, III
Richards, Layton & Finger
One Rodney Square
P.O. Box 551
Wilmington, DE 19899-0551

I hereby certify that on April 14, 2005, I have emailed the documents to the following non-registered participant at the following address:

Larry Miller
Canyon Group, LLC
370 S. Main Street
Yuma, AZ 85364

By:



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